



Fwd: Special Account scan
Kevin Murray to: Mia Bearley

09/16/2009 02:12 PM

History: This message has been replied to.

regards,
Kevin

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Begin forwarded message:

From: Julie Emery <jemery@chapman.com>
Date: September 16, 2009 2:11:10 PM MDT
To: Kevin Murray <kmurray@chapman.com>
Subject: Special Account scan

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another. However, special account funds may be used for any operable unit or subsite of one site, unless otherwise provided in the settlement agreement. Limiting the use of funds to a particular activity may be short-sighted, however, as later site developments may result in the Agency's need to use those funds for other activities at the site.

B. Timing for Use of Special Account Funds

On September 28, 2001, OSRE and OERR issued "Special Accounts: Guidance on Key Decision Points in Using Special Account Funds" (Timing and Use Guidance). This guidance describes the general hierarchy for use of special account funds. As a general matter, absent an emergency situation, special account funds should not be used to fund EPA response work until EPA has exhausted efforts to reach a settlement with PRPs for the performance of work. The availability of special account funds can serve as a significant incentive for PRPs to enter into settlements for the performance of work. Once EPA has exhausted efforts to negotiate a settlement involving special account funds, EPA can begin to spend the special account funds to perform a response action in lieu of using appropriated Trust Fund dollars for that activity.

If there are no future EPA expenditures contemplated at a site, the regions should then consider applying the special account funds toward unreimbursed EPA expenditures at a site. This process is considered by OCFO as a "reclassification" of funds.¹⁵ The remaining use of special account funds is to replenish the Trust Fund. EPA generally will transfer funds from the special account to the Trust Fund at the point in the process when there are no longer unaddressed risks and unreimbursed Agency costs at a site.

Decisions regarding the best and most appropriate use of special account funds are made throughout the response cycle at a site. As site conditions change (e.g., need for an emergency removal), or if the circumstances of the PRP change (e.g., insolvency), so may the priority for use of the special account funds. The Agency should routinely evaluate the use of special account funds.

C. Disbursing Special Account Funds to a PRP

In November 1998 OSRE issued the "Interim Final Guidance on Disbursement of Funds from EPA Special Accounts to CERCLA Potentially Responsible Parties" (PRP Disbursement Guidance), which discusses the circumstances under which a PRP may receive special account funds. It is Agency policy to provide disbursements of special account funds to a PRP only when the PRP agrees to conduct a response action as part of a settlement agreement. Special account funds should not be disbursed to a PRP performing the response

PRPs are eligible to receive funds from a special account only if they enter into a settlement.

¹⁵ See "Superfund Special Account Guidance" (OCFO)(July 2002)(Attachment 4), for the proper steps to undertake the reclassification process.